

No. 10200

**DENMARK
and
DAHOMÉY**

Agreement regarding a Danish Government loan (with annex and exchange of letters). Signed at Cotonou on 15 April 1969

Authentic text: French.

Registered by Denmark on 15 January 1970.

**DANEMARK
et
DAHOMÉY**

Accord relatif à un prêt de l'État danois (avec annexe et échange de lettres). Signé à Cotonou le 15 avril 1969

Texte authentique: français.

Enregistré par le Danemark le 15 janvier 1970.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE GOVERNMENTS OF THE
KINGDOM OF DENMARK AND THE REPUBLIC OF
DAHOMÉY REGARDING A DANISH GOVERNMENT
LOAN

The Danish Government and the Dahomean Government, desiring to strengthen the traditional co-operation and cordial relations between their countries have agreed that, with a view to the economic development of Dahomey, a Danish State loan will be granted to Dahomey in accordance with the following provisions:

Article I

THE LOAN

The Danish Government (hereinafter called the Lender) shall extend to the Dahomean Government (hereinafter called the Borrower) for economic development a loan of 15 million Danish Kroner for the purpose of purchasing capital goods and paying for services as described in article VI of this Agreement.

Article II

LOAN ACCOUNT

(1) An account designated "Government of Dahomey Special Account" (hereinafter called "Special Account") shall be opened with Danmarks Nationalbank (acting as agent for the Lender) in favour of the Banque dahoméenne de développement (acting as agent for the Borrower). The Lender shall ensure that sufficient funds are always available in the Special Account to enable the Borrower to effect punctual payments for the goods and services for which contracts have been concluded under the loan, provided, however, that the amounts successively made available to the Borrower shall not, in the aggregate, exceed the amount specified in article I.

(2) The Banque dahoméenne de développement shall be entitled, subject to the provisions of this Agreement, to withdraw from the Special Account, amounts needed for the purchase of goods or the payment of services for which contracts have been concluded under the loan.

¹ Came into force on 15 April 1969 by signature, in accordance with article XIII (1).

Article III

RATE OF INTEREST

The loan shall be free of interest.

Article IV

REPAYMENT

(1) The Borrower undertakes to repay to the Lender the principal paid into the Special Account in 35 semi-annual instalments of 420,000 Danish Kroner each, the first of which shall fall due on 31 March 1976 and the last on 31 March 1993, and a final payment of 300,000 Danish Kroner, to be made on 30 September 1993.

(2) The Borrower shall have the right to repay in advance of maturity all or part of one or more payments specified by him.

Article V

PLACE OF PAYMENT

The Borrower undertakes to repay the loan to Danmarks Nationalbank, in Danish Kroner or in any other convertible currency acceptable to that bank, by crediting the current account of the Danish Ministry of Finance with Danmarks Nationalbank.

Article VI

USE OF THE LOAN BY DAHOMEY

(1) The Borrower shall use the loan

- (a) To pay for imports from Denmark (including transport charges from Denmark to Dahomey) of Danish capital goods required for carrying out Dahomey's development plan (in accordance with the annexed list, which may be amended or extended with the mutual consent of the two Parties);
- (b) To pay for Danish services required for carrying out Dahomey's development plan, including, in particular, pre-investment studies, preparation of projects, installation costs, services of engineering consultants, and technical and administrative assistance during, for example, the putting into operation of undertakings established by means of the loan.

(2) The Borrower shall ensure that the loan is used exclusively to pay for goods and services needed to fulfil contracts approved by both Parties. The special conditions relating to payment, other than the conditions referred to in article II, shall be defined in detail by the Lender and the Borrower.

(3) The Lender shall approve contracts concluded under the loan but this shall not entail his responsibility as regards the proper execution or implementation of such contracts.

(4) The terms of payment laid down in a contract or other document establishing that an order has been placed with a Danish exporter for goods or services of the type mentioned above shall be deemed to be normal and reasonable when the said contract or document contains no clauses under which the Danish exporter grants special credit facilities.

(5) The loan shall be used only to pay for goods or services contracted for after the entry into force of this Agreement and during a period of three years from the date of its entry into force.

(6) If the proceeds of the loan have not been fully utilized within the period specified above in (5), the semi-annual payments shall be reduced in the same proportion as the amount not utilized bears to the principal of the loan.

(7) All Danish goods imported into Dahomey under this Agreement shall be exempt from customs duties and all other import levies.

Article VII

NON-DISCRIMINATION

(1) The Borrower undertakes not to accord the Danish creditor less favourable treatment with regard to the repayment of the loan than that accorded to other foreign creditors.

(2) All shipments of capital goods under the loan shall be effected in accordance with the principle that all ships have the right to engage in international trade in conditions of free competition.

Article VIII

MISCELLANEOUS PROVISIONS

(1) Prior to the first drawing against the Special Account referred to in article II, the Borrower shall satisfy the Lender that all the constitutional or other legislative requirements of Dahomey have been met so that this Agreement, under the conditions laid down therein, shall be legally binding on the Borrower.

(2) The Borrower shall furnish to the Lender evidence that the person or persons who will take any action or execute any documents under this Agreement are duly authorized thereto and shall provide a specimen signature of each of them.

(3) Any notice or request concerning this Agreement and any arrangement under this Agreement made by the Contracting Parties shall be in writing. Such notice or request shall be deemed to have been validly given or made when it has been delivered by hand or transmitted by letter, telegram or radiogram to the Party concerned at the address specified in this Agreement or at any other address communicated in writing by the said Party to the Party giving such notice or making such request.

Article IX

PARTICULAR COVENANTS

The repayment of the loan shall be effected without deduction of and free from all taxes and charges and from all restrictions applied under the domestic law of the Borrower. This Agreement shall be exempt from any charges which may be levied now or in the future under the domestic law of the Borrower on its entry into force, conclusion, delivery or registration.

Article X

CANCELLATION AND SUSPENSION

(1) The Borrower may, by a notice to the Lender, cancel any amount of the loan which he has not utilized.

If either of the following contingencies should arise and continue to obtain, the Lender may, by a notice to the Borrower, suspend, wholly or in part, the Borrower's right to draw on the Special Account:

- (a) Failure to repay the loan in accordance with the terms of this Agreement or of any other payment undertaking assumed by the Borrower in relation to the Lender;
- (b) Failure on the part of the Borrower to carry out any other obligation or decision pursuant to this Agreement.

(2) The right of the Borrower to draw on the Special Account shall continue to be suspended wholly or in part, as the case may be, until such time as the circumstance or circumstances which caused the suspension cease to exist or the Lender notifies the Borrower that the right to make withdrawals has been restored, provided, however, that where the right is restored by means of a notice to that effect, it shall be restored only to the extent and subject to the conditions specified in the said notice and that the notice shall in no way affect or impair any right, power or remedy of the Lender in respect of any contingency other than or subsequent to that which caused the suspension referred to in this article.

Should the Borrower's right to draw on the Special Account be suspended with respect to any amount of the loan for a period of 60 consecutive days, the Lender may, by a notice to the Borrower, suspend his right to withdraw such amount. The said amount shall be cancelled by such notice.

(3) Notwithstanding any cancellation or suspension, all the provisions of this Agreement shall remain in force, except as otherwise expressly provided in this article.

Article XI

REMEDIES OF THE LENDER

Should either of the contingencies referred to in article X (a) and (b) arise and continue to obtain for 60 days after the Lender has given notice thereof to the Borrower, the Lender may, at any time thereafter, declare that the outstanding balance of the loan has fallen due and become payable immediately. Upon such declaration being made, the outstanding balance shall become due and shall be paid immediately notwithstanding any provision to the contrary in the Agreement.

Article XII

SETTLEMENT OF DISPUTES

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement which has not been settled within six months through the diplomatic channel shall, at the request of one of the Parties, be submitted to an arbitral tribunal of three members. The chairman of the tribunal, who shall be a national of a third country, shall be elected by agreement between the Contracting Parties. Should the Parties fail to agree on the election of the chairman of the tribunal, each of them may request the President of the International Court of Justice to make the appointment. Each of the Parties shall appoint its own arbitrator. Should one Party fail to appoint its arbitrator, the latter may be appointed by the chairman of the arbitral tribunal.

(2) Each of the Contracting Parties shall observe and carry out the awards rendered by the arbitral tribunal.

Article XIII

VALIDITY OF THE AGREEMENT

(1) This Agreement shall enter into force on the date of its signature.

(2) This Agreement shall terminate when the entire loan has been repaid.

Article XIV

ADDRESSES

The addresses to be used by the two Parties are:

The Borrower:

Banque dahoméenne de développement
P.O. Box 300, Cotonou

Telegraphic address:
Beninbank Cotonou

The Lender:

With respect to disbursements under the loan:

Ministry of Foreign Affairs
Secretariat for Technical Co-operation with Developing Countries
Copenhagen

Telegraphic address:
Etrangères Copenhagen

With respect to repayments of the loan:

Ministry of Finance
Copenhagen

Telegraphic address:
Finans Copenhagen

IN WITNESS WHEREOF the undersigned, duly authorized by their respective Governments, have signed this Agreement.

DONE at Cotonou, on 15 April 1969, in two originals in the French language.

For the Government of Denmark:

Nonny WRIGHT
Ambassador Extraordinary and Plenipotentiary
of the Kingdom of Denmark

For the Government of Dahomey:

D. BADAROU
Minister for Foreign Affairs

ANNEX

This Agreement shall apply to deliveries by Denmark to Dahomey of machinery and capital goods or for services rendered for:

- (1) *Water development*
 - Water supply systems
 - Pumps
 - Sanitation
- (2) *Roads*
 - Road plans in the agricultural areas
 - Equipment for road maintenance
- (3) *Construction*
 - Villages for tourists
 - Administrative buildings
- (4) *Factory construction*
 - Furniture factory
 - Ceramics factory

The enterprises carrying out these projects and other projects which, by agreement between the two Governments, are to receive Danish capital goods financed under the Loan Agreement may be designated priority enterprises within the meaning of the laws and regulations in force in Dahomey.

EXCHANGE OF LETTERS

I

Cotonou, 15 April 1969

Sir,

With reference to the Agreement signed this day between the Government of Denmark and the Government of Dahomey concerning a development loan (hereinafter called the Agreement), I have the honour to propose that the following rules shall apply with respect to the implementation of article VI. Disbursements from the loan account shall be effected in the following manner:

(1) The Danish exporter or expert or the importer or investor shall draw up a contract which shall in the last instance be approved by the Danish and Dahomean authorities. No contract for Danish goods of a value of less than 100,000 Kroner, except in the case of utilization of the final balance of the loan, shall be financed under the Agreement.

(2) The Dahomean Government shall submit to the Ministry of Foreign Affairs of Denmark copies of contracts drawn up under the Agreement. The Ministry of Foreign Affairs shall ascertain, *inter alia*, whether:

- (a) the goods or services covered by the contract fall within the scope of the Agreement;
- (b) the capital goods in question were manufactured in Denmark or the services required will be rendered by persons carrying on business in Denmark. It shall subsequently notify the Dahomean Government thereof.

(3) The Dahomean Government may then draw on the account opened with Danmarks Nationalbank in order to effect payment for the goods and services referred to in the contract. Payments by withdrawal from this Account shall be subject to presentation of the necessary documents after Danmarks Nationalbank has determined that the conditions for making such disbursements have been fulfilled.

If the foregoing provisions are acceptable to the Government of Dahomey, I have the honour to propose that this letter and your reply shall constitute an agreement between our two Governments.

Accept, Sir, etc.

Nonny WRIGHT

II

REPUBLIC OF DAHOMEY
MINISTRY OF FOREIGN AFFAIRS

Cotonou, 15 April 1969

Sir,

I have the honour to acknowledge receipt of your letter of today's date which reads as follows:

[See letter I]

I have the honour to inform you that my Government is in agreement with the foregoing.

Accept, Sir, etc.

D. BADAROU